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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/080,652   | 02/22/2002  | Gregory B. Altshuler | P00547/70076 PLC    | 8139             |
| 23628  | 7590        | 07/13/2004           | EXAMINER            |                  |
| WOLF GREENFIELD & SACKS, PC<br>FEDERAL RESERVE PLAZA<br>600 ATLANTIC AVENUE<br>BOSTON, MA 02210-2211 |             |                      | SHAY, DAVID M       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3739                |                  |

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/086,652

Applicant(s)

Altshuler et al

Examiner

J. Shy

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE — 3 — MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on March 29, 2004
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-30, 32, 34-72, 74, & 76-91 is/are pending in the application.
- Of the above claim(s) 6, 7, 11, 12, 14-17, 22-24, 26, 34-40, 42-46, 49, 50, 53-58, 62-65, 68, 74-83, 85, 88-91 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-5, 8-10, 13, 18-21, 25, 27-30, 32, 41, 47, 48, 51, 52, 59-61, 66, 67, 69-72, 74, 76, 77, 84, 86, 87 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

At the outset the examiner notes that claim 68 has been listed as (withdrawn) in the instant amendment. The examiner notes that the statement of applicant's election was erroneously omitted from the previous office action. On September 24, 2003 a telephone call was made to Mr. Thomas Engelliner wherein Group I was elected, a further election of the species of Figures 20a-d was also made.

The examiner further notes that claims 27-33 were rejected as indefinite because they appeared to claim the body. As the only amendment to these claims makes it more clear that a part of the body is claimed, the examiner can only conclude that these claims are intended to encompass the body. The following rejection, therefore must result therefrom.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 27-30, 32, and 74 are rejected under 35 U.S.C. 101 because the claims explicitly recite the body.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how claim 18 further limits claim 1. It is unclear how claim 5 further limits claim 4.

Claims 1-5, 8, 9, 13, 18-21, 25, 27, 28, 30, 32, 41, 47, 48, 51, 59-61, 66, 67, 69, 70, 74 and 84 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hollnagel.

Hollnagel requires that the quartz rod be long (see page 1, line 11) and discuss the device in the context of a dental device, which devices are of necessity slender, in order to fit in the patients mouth, leave room for other instruments (e.g. a dental mirror) and leave the dentists view relatively unobstructed. Thus the device of Hollnagel has a large H (is long) and a small B (is slender) as these terms are used in the instant specification.

Claims 28-30 and 70-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Currey in combination with Hollnagel. Currey teaches a device with a concave waveguide comprising a tissue contacting area and rim which applies radiation. Hollnagel teaches the desirability of providing reflective casing on lamps and waveguides. It would have been obvious to the artisan of ordinary skill to employ a coating on the device of Currey, since this would increase the efficiency thereof, as taught by Hollnagel, thus producing a device such as claimed.

Claims 1, 4, 10, 47, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al ('041) in combination with Hollnagel. Anderson et al ('041) teach employing a diffuse reflector in a light treatment device. Hollnagel teaches the desirability of coating a waveguide with reflective material. It would have been obvious to the artisan of ordinary skill to employ the coating of Hollnagel in the device of Anderson et al, thus producing a device such as claimed.

Claims 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al ('844) in combination with Grove et al. Anderson et al ('844) teach employing pressure to control the depth of application of the laser energy. Grove et al teach that the

treatment of unwanted hair involves coagulation of the blood vessels supplying the follicle. It would have been obvious to treat the blood vessels supplying the hair follicle in the method of Anderson et al ('844) since this is required to produce permanent hair removal, as taught by Grove et al thus producing a method such as claimed.

Applicant indicates in the remarks that claim 5 has been cancelled, however, claim 5 has been reproduced unamended with the parenthetical legend "Original" associated therewith thus the rejection of claim 5 has been repeated. On closer inspection of claims 18-20, 27-30, 37, 59-61, 69-72, and 74 and in view of applicant's arguments, the rejections drawn to duplication are withdrawn. Regarding claim 27 et seq. transitional phrase such as -- adapted to -- or -- configured to -- is required prior to the recitation "contacting the patients skin" order to remedy the explicit claiming of a part of the body.

Applicant's arguments regarding Hollnagel have been substantially answered above. Applicant have provided no evidentiary showing or reasoned arguments why such an interpretation of the disclosure of Hollnagel is improper, thus these arguments are not convincing. It is further noted, with respect to the originally filed disclosure, that the device of e.g. Anderson et al ('844) wherein a fiber optic of sufficiently small diameter as to be flexible (e.g. less than 25 mm diameter, or B as discussed in the specification) and a length sufficient to reach a substantial percentage of the trunk of a patient (e.g. one meter in length or H as discussed in the original specification), would clearly qualify as  $H \gg B$  and would thus read on this portion of the claim. Applicant is respectfully reminded that an apparatus need only meet the claim limitations to anticipate or render obvious the claim, there is no requirement that any reference actually articulate the limitation if it is shown to be inherent therein. While the

examiner appreciates the point of novelty applicant is trying to bring out, the instant claims are simply too broad, as any coated optical fiber commonly used in the art would read on the broader claims herein.

Applicants remaining arguments, predicated on the perceived insufficiency of the Hollnagel reference, are not convincing.

Applicant's arguments filed March 29, 2004 have been fully considered but they are not persuasive. The arguments are not convincing for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



Shay/DI

June 21, 2004

DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330